

## **Topsfield Planning Board**

April 21, 2015

Chairman Morrison called the meeting to order at 8:00 PM at the Town Library. Board members present were Martha Morrison, Jeanine Cunniff, Joseph Geller, Ian De Buy Wenniger and Steven Hall. Roberta Knight, Community Development Coordinator was also present.

**Visitors:** Selectman Dick Gandt; Stephen Silveri, Attorney Nancy McCann, Jeff Garber, Scott Cameron, Attorney Alan Grenier, James O'Brien, Paul Richardson, Mark Bernhardt, Heidi Fox, Kim Sherwood and others. See attendance list.

### **PLANNING BOARD ZONING WARRANT ARTICLES PUBLIC HEARING**

At 8:00PM, Chairman Morrison opened the public hearing to consider the following proposed amendment to the Topsfield Zoning By-law for the May 5, 2015 Annual Town Meeting. Clerk Steven Hall read the legal notice for the record. See below.

1. **Article III, Section 3.02:** amends the Table of Use Regulations as follows:  
Sub-Section 4.35 Commercial Kennel to be allowed in the Business District Highway North by special permit.
2. **Article III, Sections 3.13:** amends the existing bylaw that applies to the parking of automobiles for which a direct or indirect charge is made in all residential districts for the period of the Essex Agricultural Fair and adds the requirement of a Special Permit for lots parking 20 or more automobiles.
3. **Article III, Section 3.05:** reconsideration of March 17, 2015 public hearing vote to approve an amendment to said section for nonconforming uses.

Chairman Morrison made a summary presentation of the proposed amendments. Chairman Morrison also noted that the warrant articles under review at this public hearing were requested by property owners within the districts that the zoning amendments would affect. The first was submitted by Stephen Knowles which would amend Section 3.02; the second request was by Richardson Green Inc. which would amend Section 3.13. The Board then proceeded to review the zoning amendments by article as listed in the legal notice and in the public hearing document titled "Proposed 2015 Zoning Warrant Articles".

**Article III, Section 3.02:** Chairman Morrison requested that the Applicant or representative make a summary presentation of the amendment request to the Board. Attorney Alan Grenier, the represented owner Stephen Knowles for the property located at 374 Boston Street within the Business Highway North District. Attorney Grenier noted that commercial kennels are allowed by special permit from the Zoning Board of Appeals in the Business Highway and Business Park districts, and if the amendment is passed, commercial kennels would be allowed under zoning in the Business Highway North District (BHN) only by special permit. Mr. Grenier further reviewed the improvements

and accommodations such as an enclosed outside area, sound proofing, and the installation of web cameras made by the Bernhardt's at the leased property for use as a commercial kennel and related doggy daycare services. He stated as well that the Bernhardt's also owned 10 dogs that were housed at this facility. Moreover, the property has other units that house a veterinarian, grooming shop, and dog training facility, which are related uses for animal care and that a commercial kennel would be a compatible use for the property.

Chairman Morrison responded that commercial kennels are not permitted in the BHN and that the business has been located at the site for six (6) months as an illegal use. Ms. Morrison further clarified that this request for a change in zoning is to allow an illegal use to continue in operation. In addition, the Inspector of Buildings had notified the owner of the business that the use was not allowed, and that he would need to find another location as soon as possible.

Board Member Ian De Buy Wenniger noted that the business owner knowingly disregarded the zoning violation with his continued operation for the last six months.

Member Jeanine Cunniff noted that it was a small district with residential abutters in close proximity and that she had concerns for the residential neighbors.

Member Joseph Geller noted that the use was a flagrant disregard of the bylaws and a violation of the law.

Mr. Mark Bernhardt, owner of the facility, addressed the Board explaining his business plan and his concerns for all abutters especially the employees at the EBSCO Offices next door. Dogs are only outside at certain times of the day.

Ms. Kim Sherwood, a long-time client of the facility and a resident of Topsfield spoke in favor of its continued use, noting that the Bernhardt's were responsible business owners that cared about the animals in their care. Bob Wiktorowski, resident and owner of Country Motors spoke in favor of the operation and noted its location on US Route 1.

Other residents of the neighboring areas spoke against the continued use of the operation.

Chairman Morrison entertained a motion to close the public hearing for Section 3.02. Member Jeanine Cunniff made the motion to close the public hearing; seconded by Clerk Steven Hall; so voted 5-0.

#### **Deliberations and Vote of the Board:**

**Article III, Section 3.02:** Clerk Steven Hall made the motion that the Planning Board recommends No Action relative to Article III, Section 3.02 to change the zoning from "not permitted" to "special permit" for commercial kennels in the Business Highway North District; seconded by Member Joseph Geller; so voted 5-0.

Clerk Steven Hall volunteered to present the recommendation at Town Meeting and investigate the classification of “doggie daycare”.

**Article III, Section 3.13:** Chairman Morrison requested that the Applicant or representative make a summary presentation of the amendment request to the Board. Mr. Paul Richardson, owner of the property informed the Board of his intent to sell the property to the Essex Agricultural Society, “the Fair” and keep the property under agricultural use. The cows would be housed in the lower pasture, and the upland would continue to be farmed.

Mr. James O’Brien, Fairground’s Manager, stated that in order for the Fair to purchase the property and keep it in agricultural use, the upland property would need to be used during the period of the Agricultural Fair for parking in order to generate revenue to support the purchase. Mr. O’Brien further stated that he has had several discussions on the proposed parking with the Police Chief who does support the idea of parking as a public safety issue and that it would reduce waiting time on Route 1 for the Fair. In addition, the rental duplex would be kept and two employees of the Fair have expressed interest in living on the property which they would help to maintain. The property would not have a tax issue since it would remain under the Chapter 61A as agricultural land with the upland hayed and seeded as is the current status.

Chairman Morrison noted that this would be in keeping with the rural heritage of the Town.

Both residents Heidi Fox and Kim Sherwood raised issues concerning this amendment which would allow the parking of more than twenty vehicles at any location within the residential zones although subject to a special permit by the Zoning Board of Appeals. There was a lengthy discussion on what those conditions would be. This was followed by another discussion of proposed suggested language change for the amendment by Selectmen Gandt. Chairman Morrison and Member De Buy Wenniger stated that they favored to keep the Planning Board’s proposed language. After further discussion, it was the consensus of the Board to add the words “at any one time” after the word “lot”. Since the warrant has already gone to press, the Board will address the change in language as an amendment on the floor of Town Meeting. Chairman Morrison volunteered to make the presentation at Town Meeting.

Chairman Morrison entertained a motion to close the public hearing. Member Jeanine Cunniff made the motion to close the public hearing; seconded by Member Joseph Geller; so voted 5-0.

#### **Deliberations and Vote of the Board:**

**Article III, Section 3.13:** Member Ian De Buy Wenniger made the motion to recommend positive action on Article 42, Section 3.13 as amended with the inclusion of “at any one time” ; seconded by Member Jeanine Cunniff; so voted 5-0.

The Board did not entertain any reconsideration of Article III, Section 3.02 (Article 40) Nonconforming Uses.

The meeting was adjourned at 10:15 PM.

Respectfully submitted,

Roberta M. Knight  
Community Development Coordinator